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12 WINTER, Circuit Judge:

13 Sharif Robinson appeals from his conviction and sentence
14 after pleading guilty before Judge Seybert to aiding and
15 abetting, 18 U.S.C. § 2: (i) carjacking, in violation of 18
16 U.S.C. § 2119; and (ii) the brandishing of a firearm during a
17 crime of violence, i.e., the carjacking, in violation of 18
18 U.S.C. § 924(c). Appellant challenges the sufficiency of the
19 evidence supporting his plea in light of Rosemond v. United
20 States, 134 S. Ct. 1240 (2014), and asks us to vacate the plea
21 and conviction.

22 We hold that his conviction for aiding and abetting a
23 violation of Section 924(c) was supported by his admission that
24 he knew that a firearm was being used during the carjacking and
25 thereafter aided and abetted the carjacking. Alternatively,
26 appellant attacks the procedural reasonableness of his sentence.
27 We hold that the district court did not err in failing to depart
28 downwardly from the Sentencing Guidelines because of appellant's
29 confinement in decrepit and unsafe conditions of confinement at
30 the Nassau County Correctional Center. Accordingly, we affirm.

1 BACKGROUND

2 Based on the colloquy accompanying the guilty plea, the
3 following facts were the basis for appellant's conviction.

4 On August 26, 2012, appellant was "hanging out" with Marcus
5 Hutchinson and two other men on Albemarle Avenue in Hempstead,
6 New York, when they observed a Cadillac turning the corner to
7 Nostrand Place. Hutchinson, recognizing the male driver, left
8 the group, telling the others that he was going to rob the
9 driver. No mention was made of the use of a gun.

10 Hutchinson followed the car and disappeared around the
11 corner, but the driver retreated to a nearby house. Hutchinson
12 then decided to steal the Cadillac, in which a female passenger
13 remained. As this confrontation was happening, appellant
14 "decided to go around the corner to make sure everything was all
15 right." J. App. at 36. After rounding the corner, appellant saw
16 Hutchinson pointing a gun at the Cadillac's female passenger, who
17 "was getting out of the car." J. App. at 41. Appellant told
18 Hutchinson to "put the gun away." J. App. at 41-42. Hutchinson
19 did so; the female passenger fled; and appellant and Hutchinson
20 then drove off in the vehicle. They were soon apprehended.

21 Appellant was indicted for aiding and abetting, under 18
22 U.S.C. § 2: (i) carjacking, in violation of 18 U.S.C. § 2119;
23 and (ii) brandishing a firearm during a crime of violence, i.e.,
24 the carjacking, in violation of 18 U.S.C. § 924(c).

1 During his plea colloquy, appellant stated that he had been
2 initially unaware that Hutchinson was planning to use a gun
3 during the robbery. Appellant admitted that, at all pertinent
4 times, he knew that a robbery was intended and that the female
5 passenger was involuntarily surrendering the Cadillac. He also
6 acknowledged that he learned that the gun was being used to take
7 the vehicle, although he did tell Hutchinson to put the gun away
8 when he saw it.

9 During the colloquy, the prosecutor noted that appellant did
10 not "turn[] and run[] the other way" after realizing that a gun
11 was being used. J. App. at 40. Instead, he continued to join in
12 as a reinforcement in the stealing of the vehicle. The district
13 judge asked appellant if he agreed with the version of events as
14 stated by the prosecutor, and appellant replied "yes." After
15 appropriate warnings to appellant of the consequences of pleading
16 guilty, the district judge accepted the plea.

17 On February 28, 2014, the district court sentenced appellant
18 to 28 months of imprisonment on the aiding and abetting a
19 carjacking count and 84 months of imprisonment on the aiding and
20 abetting the brandishing of a firearm during a crime of violence
21 count. At sentencing, appellant's counsel requested that the
22 district court downwardly depart from the applicable Sentencing
23 Guidelines based on the conditions of confinement at Nassau
24 County Correctional Center ("NCCC"). Counsel alleged, *inter*
25 *alia*, that food preparation takes place under unsanitary

1 conditions; access to the law library is restricted to only 45
2 minutes a day; heating systems are non-existent; inmate housing
3 is substandard with water leaks and roach infestations; and
4 unaffiliated inmates are not segregated from violent gang
5 members. The district court denied the request, noting that it
6 had past experience with cases out of NCCC. The court also
7 suggested that counsel had not provided enough evidence to
8 warrant a downward departure. The sentence described above was
9 then imposed.

10 On March 5, 2014, the Supreme Court decided Rosemond v.
11 United States, 134 S. Ct. 1240 (2014), clarifying the
12 relationship of the aiding and abetting statute, 18 U.S.C. § 2,
13 and 18 U.S.C. § 924(c)'s prohibition against using a firearm
14 during a crime of violence. On appeal, appellant argues that his
15 plea lacked a sufficient factual basis under Rosemond because he
16 was unaware that Hutchinson planned to use a gun in the
17 carjacking until he turned the corner and saw the weapon.
18 Alternatively, appellant attacks the procedural reasonableness of
19 his sentence given the district court's failure to depart from
20 the Sentencing Guidelines.

21 DISCUSSION

22 a) Sufficiency of the Evidence in Light of Rosemond

23 Under Fed. R. Crim. P. 11, the district court may accept a
24 guilty plea only if the plea has a "factual basis." Fed. R.
25 Crim. P. 11(b)(3). The court is not required "to weigh evidence

1 to assess whether it is even more likely than not that the
2 defendant is guilty." United States v. Maher, 108 F.3d 1513,
3 1524 (2d Cir. 1997). Instead, the district court must simply
4 satisfy itself that "the conduct to which the defendant admits is
5 in fact an offense under the statutory provision under which he
6 is pleading guilty." Id.; see also Fed. R. Crim. P. 11(f).

7 In making this inquiry, the district court can accept a
8 defendant's own admissions as true. Maher, 108 F.3d at 1521.
9 The court can rely on the defendant's admissions and any other
10 evidence placed on the record at the time of the plea, including
11 evidence obtained by inquiry of either the defendant or the
12 prosecutor. Irizarry v. United States, 508 F.2d 960, 967 (2d
13 Cir. 1974); see also United States v. Adams, 448 F.3d 492, 499
14 (2d Cir. 2006). But, any plea colloquy must involve more than
15 simply "a reading of the indictment to the defendant coupled with
16 his admission of the acts described in it." United States v.
17 McFadden, 238 F.3d 198, 201 (2d Cir. 2001) (internal quotation
18 marks omitted).

19 We review objections to the sufficiency of a guilty plea,
20 where -- as here -- the defendant raised no objection below, for
21 plain error. United States v. Vonn, 535 U.S. 55, 62-63 (2002);
22 see also United States v. Vaval, 404 F.3d 144, 151 (2d Cir.
23 2005). We find no error here, much less plain error.¹

¹ As noted in United States v. Needham, we have "applied a modified plain error analysis in cases where, as here, the source of plain error is a supervening decision," whereby "the government, not the defendant, bears the burden to demonstrate

1 Under Section 924(c), it is a crime to brandish a firearm
 2 "during and in relation to any crime of violence." 18 U.S.C. §
 3 924(c)(1)(A). For its part, the federal aiding and abetting
 4 statute punishes, as a principal, an individual that "aids,
 5 abets, counsels, commands, induces or procures" the commission of
 6 an underlying federal offense. 18 U.S.C. § 2. In Rosemond, the
 7 Supreme Court explained "what it takes to aid and abet a § 924(c)
 8 offense." 134 S. Ct. at 1245.

9 The Court noted that the aiding and abetting statute
 10 requires both an affirmative act furthering the underlying
 11 offense and an intent to facilitate that offense's commission.
 12 Id. The Supreme Court emphasized that the affirmative act
 13 requirement is met when the defendant facilitates any element of
 14 the underlying offense. Id. at 1247. Therefore, a defendant's
 15 conduct can satisfy the affirmative act requirement of aiding and
 16 abetting the Section 924(c) offense, even if the act did not
 17 specifically facilitate the use of the firearm. Id. at 1248.

18 The intent requirement is stricter than the facilitation
 19 requirement in that "the intent must go to the specific and
 20 entire crime charged -- so here, to the full scope (predicate
 21 crime plus gun use) of § 924(c)." Id. It is true that the

that the error . . . was harmless." 604 F.3d 673, 678 (2d Cir. 2010) (internal quotation marks and citations omitted). This standard may be incorrect in light of Johnson v. United States, where the Supreme Court applied plain error review when the error stemmed from a change in Supreme Court law decided after the defendant's conviction. See 520 U.S. 461, 466 (1997). We "need not resolve this open question [here] because, whether plain error or some modified approach is applied, our conclusions would be the same." Needham, 604 F.3d at 678.

1 requisite intent to use a gun is shown only when a defendant has
2 prior knowledge that a firearm will be used. However, the
3 requisite prior knowledge "means knowledge at a time the
4 accomplice can do something with it -- most notably, opt to walk
5 away." Id. at 1249-50. In other words, "[a] defendant manifests
6 that greater intent, and incurs the greater liability of
7 § 924(c), when he chooses to participate in a [violent crime]
8 knowing it will involve a firearm; but he makes no such choice
9 when that knowledge comes too late for him to be reasonably able
10 to act upon it." Id. at 1251. And, a defendant can reasonably
11 walk away upon learning of a gun's use or planned use, so long as
12 withdrawing would not "increase the risk of gun violence." See
13 id.

14 At the time of appellant's plea, there was a sufficient
15 factual basis on the record for the district court to accept
16 appellant's plea. The affirmative act requirement is easily met
17 because appellant joined Hutchinson in taking the car. The
18 intent requirement is also satisfied because, upon learning that
19 a gun was being brandished, appellant, as he conceded in his plea
20 colloquy, had a chance to "turn[] and run[] the other way" but
21 did not. J. App. at 40. See id. at 1250 n.9 (noting that
22 advance knowledge can be inferred "if a defendant continues to
23 participate in a crime after a gun was displayed or used by a
24 confederate"). Robinson saw the gun as he rounded the corner,
25 and joined the carjacking while Hutchinson was still

1 "brandishing" the gun within the meaning of § 924(c)(4). Instead
2 of leaving then and there, he continued to participate. Thus,
3 there was a sufficient "temporal and relational conjunction," id.
4 at 1248, between the predicate crime and the use of the firearm
5 to support a § 924(c)(1)(A)(ii) conviction under an aiding and
6 abetting theory of liability. Finally, there is no reason on
7 this record to believe that appellant's withdrawing would
8 increase the risk of gun violence, although Robinson could
9 certainly have argued so had he gone to trial.

10 In sum, appellant could have reasonably retreated -- but did
11 not -- and the requirement described in Rosemond was met. We
12 accordingly conclude that the district court properly accepted
13 appellant's plea.

14 b) The Sentence's Procedural Reasonableness

15 Appellant attacks the procedural reasonableness of his
16 sentence -- arguing that the district court erred by not
17 downwardly departing from the Sentencing Guidelines given the
18 conditions of confinement at NCCC. Appellant also contends that
19 the court erred by not adequately explaining its reasons for
20 refusing to depart. We review sentences for procedural
21 reasonableness under a deferential abuse-of-discretion standard.
22 United States v. Adams, 768 F.3d 219, 224 (2d Cir. 2014). A
23 district court commits procedural error when, *inter alia*, it
24 "treat[s] the Guidelines as mandatory" or fails "to adequately
25 explain the chosen sentence." Gall v. United States, 552 U.S.

1 38, 51 (2007); see also United States v. Preacely, 628 F.3d 72,
2 79 (2d Cir. 2010). The district court committed neither of these
3 errors.

4 While it is true that "pre-sentence confinement conditions
5 may in appropriate cases be a permissible basis for downward
6 departures," United States v. Carty, 264 F.3d 191, 196 (2d Cir.
7 2001), appellant provides insufficient reason to overturn the
8 district court's failure to depart from the Guidelines.

9 First, a district court's decision not to depart from the
10 Guidelines is generally unreviewable, unless it misunderstood its
11 authority to do so. Adams, 768 F.3d at 224; see also United
12 States v. Valdez, 426 F.3d 178, 184 (2d Cir. 2005) ("[A] refusal
13 to downwardly depart is generally not appealable" unless "a
14 sentencing court misapprehended the scope of its authority to
15 depart or the sentence was otherwise illegal."). And, "[i]n the
16 absence of clear evidence of a substantial risk that the judge
17 misapprehended the scope of his departure authority, we presume
18 that a sentenc[ing] judge understood the scope of his authority."
19 United States v. Stinson, 465 F.3d 113, 114 (2d Cir. 2006) (per
20 curiam) (internal quotation marks omitted). There is nothing in
21 the record suggesting that the district court misunderstood its
22 ability to depart from the Guidelines. After implying that a
23 departure would be possible, albeit a "special consideration,"
24 the court listened to arguments on the merits of a downward
25 departure.

